Office-Supreme Court, U.S.
FILED
JUL 27 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 390

THE NEW YORK CENTRAL RAILROAD COMPANY, *et al.*,
Petitioners,

—v.—

PUBLIC SERVICE COMMISSION OF INDIANA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

KARL J. STIPHER
DANIEL E. JOHNSON
810 Fletcher Trust Building
Indianapolis, Indiana 46204

PAUL A. PORTER
DENNIS G. LYONS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

Attorneys for Petitioners

Of Counsel:

BAKER & DANIELS
Indianapolis, Indiana

ARNOLD & PORTER
Washington, D. C.

July, 1966

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	3
Constitutional Provision Involved	3
Statement	3
Reasons for Granting the Writ	8
Conclusion	15

APPENDICES:

Appendix A —Revised Opinion and Judgment of Indiana Supreme Court, May 19, 1966	1a
Appendix A-1—Order Accompanying Revised Opinion and Judgment, May 19, 1966	15a
Appendix B —Original Opinion and Judgment of Indiana Supreme Court, March 8, 1966	17a
Appendix C —Petition for Rehearing Filed by Appellees [Petitioners in this Court] in the Supreme Court of Indiana, March 25, 1966	29a

CITATIONS

CASES:

Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959) 11
Board of Comm'rs v. Lucas, 93 U.S. 108 (1876) 3, 9, 14

Page

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930) 7, 8
Brotherhood of Locomotive Engineers v. Chicago, R.I. & P.R. Co., 382 U.S. 423 (1966) 4, 5, 6, 10, 12, 13, 14

Cole v. Arkansas, 333 U.S. 196 (1948) 9

Department of Insurance v. Motors Insurance Corp., 236 Ind. 1, 138 N.E.2d 157 (1956) 13
DuBeau v. Smither and Mayton, Inc., 203 F.2d 395 (D.C. Cir. 1953) 11

Great Northern R. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358 (1932) 7
Greene v. McElroy, 360 U.S. 474 (1959) 11

Iowa-Des Moines Nat'l Bank v. Bennett, 284 U.S. 239 (1931) 11

Morey v. Doud, 354 U.S. 457 (1957) 11

NAACP v. Alabama, 357 U.S. 449 (1958) 9
Nashville, C. & St. L. Ry. v. Walters, 294 U.S. 405 (1935) 10

Pavaroff v. Pavaroff, 130 P.2d 212 (Cal. App. 1942) 11
Pettigrew v. National Accounts System, Inc., 213 N.E. 2d 778 (Ill. 1966) 8

Saunders v. Shaw, 244 U.S. 317 (1917) 8
Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) 11

The Ottawa, 3 Wall. 268 (1866) 11
Tinder v. Clarke Auto Co., 238 Ind. 302, 149 N.E.2d 808 (1958) 13

Weis v. Cox, 205 Ind. 43, 185 N.E. 631 (1933) 14

Page

STATUTES AND CONSTITUTIONAL PROVISIONS:

U. S. Constitution, Article I, Section 8, Clause 3 .....4, 12

U. S. Constitution, Amendment XIV, Section 1 ....3, 4, 6, 7, 8, 9, 10, 11, 12

Public Law 88-108, 77 Stat. 132 (1963) 4, 13

28 U.S.C. § 1257(3) 3

Indiana Acts 1937, c. 58, §§ 1-13, Indiana Stat. §§ 55-1326 to 55-1338 .....3, 5, 6, 10

MISCELLANEOUS:

Note, 74 Harv. L. Rev. 1375 (1961) 9

Stern & Gressman, Supreme Court Practice (3d ed. 1962) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

THE NEW YORK CENTRAL RAILROAD COMPANY, *et al.*,

Petitioners,

—v.—

PUBLIC SERVICE COMMISSION OF INDIANA, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

Petitioners, The New York Central Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The New York, Chicago and St. Louis Railroad Company, Monon Railroad, Erie-Lackawanna Railroad Company, Elgin, Joliet and Eastern Railroad Company, Louisville and Nashville Railroad Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Grand Trunk Western Railroad Company, The Chesapeake and Ohio Railroad Company, Chicago & Eastern Illinois Railroad Company, Southern Railway Company, Illinois Central Railway Company, Central Indiana Railway Company, and The Peoria and Eastern Railway Company, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Indiana entered in the above-captioned case on May 19, 1966.

OPINIONS BELOW

The trial court entered no written opinion. The revised opinion and judgment of the Supreme Court of Indiana, dated May 19, 1966, printed herein at pp. 1a-14a as Appendix A, is reported at 216 N.E.2d 716. The order accompanying the revision is printed herein as Appendix A-1, at pp. 15a-16a. The original opinion and judgment of the Supreme Court of Indiana, dated March 8, 1966, is printed herein at pp. 17a-28a as Appendix B.

JURISDICTION

The Supreme Court of Indiana issued its original opinion and judgment on March 8, 1966. A timely Petition for Rehearing, printed herein at pp. 29a-33a as Appendix C, was filed on March 25, 1966.[1] On May 5, 1966, the Petition for Rehearing was denied without opinion by docket entry. This Petition for Certiorari is filed within 90 days of that denial. On May 19, 1966, upon a Petition for Reconsideration, the Supreme Court of Indiana amended its opinion to make clear that a final judgment had been entered as follows:

> "The judgment and decree of the Superior Court of Marion County, Room 3, is reversed, the temporary injunction vacated, this cause is remanded and the court is directed to enter final judgment therein denying plaintiffs below the relief sought all at the costs of plaintiffs below . . . ." (Appendix A, p. 13a)

---

[1] For the reasons indicated below, pp. 4-7, the specific federal question now presented by this Petition for Certiorari was, necessarily, first raised in the Petition for Rehearing.

Accordingly, it is unquestionable that a final judgment subject to review by this Court has been entered. *Board of Comm'rs* v. *Lucas*, 93 U.S. 108 (1876).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether a state appellate court can, consistent with the due process requirements of the Fourteenth Amendment, deny a trial of federal constitutional issues turning on factual presentations by directing the entry of final judgment in the course of an interlocutory review of a temporary injunction.

CONSTITUTIONAL PROVISION INVOLVED

The Petitioners' claim is founded on the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, which reads:

> "... [N]or shall any State deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT

Petitioners brought this action on May 13, 1964, in the Superior Court of Marion County, Indiana, seeking a temporary injunction and a permanent injunction to enjoin the Public Service Commission of Indiana and appropriate state officials from enforcing the Indiana Full Crew Law[2] against Petitioners. That law, enacted in 1937, generally

[2] Indiana Acts 1937, c. 58, §§ 1-13, Indiana Stat. §§ 55-1326 to 55-1338.

requires that a fireman be employed on every diesel locomotive in Indiana, that every freight train of less than seventy cars carry five crew members, and that an extra crewman (a third brakeman) be added to this complement on every train of seventy cars or more.

The Petitioners contended[3] that the Indiana Full Crew Law constituted both an impermissible burden on, and an unlawful and unconstitutional discrimination against, interstate commerce, both in violation of the Commerce Clause of the Federal Constitution; that the statute substantively violated the Due Process Clause of the Fourteenth Amendment; that it violated the Equal Protection Clause of the Fourteenth Amendment; and—a contention later rejected by this Court in the Arkansas full crew case, *Brotherhood of Locomotive Engineers* v. *Chicago, R. I. & P. R. Co.*, 382 U.S. 423 (1966)[4]—that the statute was preempted by the compulsory arbitration law, Public Law 88-108, enacted by Congress in 1963. Four national railroad brotherhoods intervened as parties defendant, but two—the brotherhoods representing the engineers and the trainmen—later withdrew from the case.

The Superior Court, after receiving only affidavits and documentary evidence, granted a temporary injunction to Petitioners on February 3, 1965. The merits of the Petitioners' claims were not at issue, neither the defendants nor

---

[3] See the allegations of the complaint recited in the Indiana Supreme Court's opinion, Appendix A, pp. 2a-3a.

[4] Contentions similar to those remaining to Petitioner were not passed upon by this Court in the Arkansas full crew case; indeed, contentions similar to these were expressly found not insubstantial and were "remanded to [the District] Court for consideration" by this Court in the Arkansas case. 382 U.S., at 438. See also *id.*, at 428.

the intervening defendants having answered the complaint. No findings of fact were requested or made and no trial occurred on the merits of the Petitioners' request for permanent relief. The defendant state officials and brotherhoods appealed the temporary injunction to the Indiana Supreme Court pursuant to an Indiana procedure permitting such interlocutory appeals.

On March 8, 1966, the Indiana Supreme Court rendered an opinion that not only dissolved the temporary injunction but undertook affirmatively and finally to uphold the statute against all the attacks raised in Petitioners' complaint under the Federal Constitution. The Supreme Court of Indiana thus entered an order permanently disposing of the entire action even though the trial court had considered only the question whether a temporary injunction should issue, and even though no trial on the merits of the plaintiffs' suit for permanent relief had been held.

The Indiana Supreme Court's opinion was rendered with two of the court's five judges not participating and with a third concurring only in the result. (Appendix B, p. 28a) The two-member majority opinion reviewed this Court's recent decision in *Brotherhood of Locomotive Engineers* and held—without analysis of the various points urged by Petitioners and remaining open despite this Court's decision in *Brotherhood of Locomotive Engineers*—that because the present Full Crew Law and an earlier version had already been held constitutional on two occasions and because of the presumption of constitutionality, the statute's constitutionality was beyond challenge. (Appendix B, pp. 24a-26a; see Appendix A, pp. 8a-10a) The Indiana Supreme Court did not discuss individually the separate federal constitutional points urged by Petitioners against the

Full Crew Law.[5] Nor did it offer any explanation of the reasons why it believed it had the power to render a final judgment holding the Act constitutional on an appeal from a grant of a temporary injunction and in the absence of the plenary development of facts by oral testimony, cross-examination, and findings that would have taken place upon a trial looking toward the issuance of a permanent injunction.

On March 25, 1966, Petitioners submitted a timely Petition for Rehearing which, among other points, urged that the denial of a trial on the merits of permanent relief was inconsistent with the due process requirements of the Fourteenth Amendment. This Petition for Rehearing for the first time raised the federal question now tendered to this Court—the conflict between the procedural due process requirements of the Fourteenth Amendment and the Indiana Supreme Court's action in foreclosing any trial on the merits of the case. The question was presented in the following language:

---

[5] The court simply cited this Court's decision in *Brotherhood of Locomotive Engineers* v. *Chicago, R.I. & P.R. Co.*, 382 U.S. 423 (1966) (which was announced while this case was pending before the Indiana Supreme Court), and stated that it held that the compulsory arbitration law and the Award thereunder did not invalidate state full crew laws, and that the Arkansas full crew laws had not been shown to constitute an impermissible discrimination against interstate commerce by reason of their nonapplication to railroads of less than a defined mileage. The claims of unconstitutional burden on interstate commerce, of substantive violation of the Due Process Clause, and under the Equal Protection Clause were not discussed by the State Supreme Court; nor did it even attempt to show how this Court's discussion of the discrimination against interstate commerce point in the Arkansas case—which had been based on the specific peculiarities of the Arkansas statute and of the mileages of the railroads operating in Arkansas (see 382 U.S., at 437)—applied to the situation in Indiana. (Appendix B, pp. 23a-26a; see Appendix A, pp. 7a-10a)

"... The appellees [petitioners in this Court] are entitled to a trial on the merits of this case, and any denial of that right would not only constitute error under Indiana procedural law, but also would deprive the appellees of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States...." (Appendix C, p. 32a)

Since the question presented concerns an issue created for the first time by the decision and opinion of the Indiana Supreme Court, the question was timely and properly raised below by its inclusion in a Petition for Rehearing of that decision. *Great Northern R. Co.* v. *Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932); *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673 (1930); Stern & Gressman, *Supreme Court Practice* (3d ed. 1962), p. 99.

On May 5, 1966, the Petition for Rehearing was denied without opinion and without express reference to the procedural due process question which had been timely presented in the Petition for Rehearing. The Petitioners filed a Petition for Reconsideration. On May 19, 1966, while again not discussing the claim that its action in foreclosing a trial on the merits violated the Fourteenth Amendment, the Supreme Court of Indiana, by amendment to its opinion, made it perfectly clear that the lawsuit was terminated and that Petitioners would not be allowed a trial on the merits.[6] The Judge who had originally concurred in the

[6] The two-judge majority opinion declared:

"The facts and determination heretofore and here stated, bar appellees from taking any further action in the court below and leaves the trial court with no jurisdiction or authority to grant the relief there prayed for and deprives it of any further jurisdiction to do anything other than make the entry required therein by this opinion." (Appendix A, p. 12a)

result filed a separate opinion, dissenting from the entry of final judgment, and stating that "the appellant[7] should not be barred from having a trial on the merits of the main action, which is still pending in the trial court, as provided by the mandate in the majority opinion in this case." (Appendix A, p. 14a)

REASONS FOR GRANTING THE WRIT

1. The action of the Supreme Court of Indiana in directing that final judgment be entered on an interlocutory appeal from the grant of a temporary injunction is in conflict with the applicable decisions of this Court and the decisions of the highest courts of other states delineating the basic elements of a full and fair hearing necessary to due process of law.

This Court has recognized that a state appellate court denies a litigant due process of law in violation of the Fourteenth Amendment to the Constitution if it attempts to deny the litigant a trial on the merits of a federal constitutional claim. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U.S. 673 (1930); *Saunders* v. *Shaw,* 244 U.S. 317 (1917). And the Supreme Court of Illinois has held that a trial court's conversion, without advance notice, of a hearing on a temporary injunction into a trial on the merits violates the elementary requirement of notice essential to due process. *Pettigrew* v. *National Accounts System, Inc.,* 213 N.E.2d 778 (Ill. 1966). *A fortiori,* the conversion of a preliminary proceeding into a trial on the merits of permanent injunctive relief, *retroactively* effected by an appellate court on review of a trial court's preliminary order, denies the parties the requisite notice of the

[7] Presumably a misprint for "appellees."

import of the hearing in the trial court, and violates the Due Process Clause.

Petitioners' position is simple: the retroactive conversion of a preliminary proceeding into a full trial on the merits is not simply a dubious state procedural practice. By denying the parties advance notice of the gravity and finality of that proceeding, this retroactive conversion denies them due process of law. In legal principle, this case is, we urge, governed by an application of the rule that the state may not cause legal issues to be framed in one manner in the trial court, and then prejudicially change the issues on appeal—as, for example, by trying a defendant on one charge and affirming on appeal his conviction on another, a practice which this Court has held to violate the Due Process Clause. *Cole* v. *Arkansas,* 333 U.S. 196 (1948). *Cf. NAACP* v. *Alabama,* 357 U.S. 449 (1958); Note, 74 Harv. L. Rev. 1375, 1387-88 (1961).[8]

To be sure, a state court might enter final judgment on appeal from a temporary injunction if the merits of the case turn only on propositions of law in the context of undisputed facts. *Board of Comm'rs* v. *Lucas,* 93 U.S. 108 (1876). But this is not such a case. The substantive issues Petitioners sought to present to the state courts are

[8] Thus, the question whether a temporary injunction should have issued involved, besides a preliminary development of the merits, an extensive development of the effect of interlocutory relief upon the status quo and of the various other equitable factors which are traditionally weighed by a court of equity in considering whether to issue a temporary injunction; these issues are, however, irrelevant to a permanent injunction. It was in this procedural setting and to this end that the parties developed their presentations (which were admittedly bulky) through the submission of written proofs, by affidavits and appended exhibits, on the application for a temporary injunction. Indeed, the state supreme court's opinion reflects the importance of the issues as to temporary relief to the case developed below (Appendix B, pp. 26a-28a), but nonetheless proceeds to change the issues on appeal.

in most respects similar to those that are now before the District Court for the Western District of Arkansas on remand from this Court in the *Brotherhood of Locomotive Engineers* case. These are the very questions that this Court did not consider in the abstract on that appeal, and which presented "factual issues calling for the introduction and determination of evidence." 382 U.S., at 427. These issues turn essentially on the development of factual proofs regarding the nature and extent of the changed circumstances achieved through the technological developments of modern railroading since the enactment of the Indiana Full Crew Law. The impact of these changes upon the role of the various engine and train crew employees is vital to any assessment of the statute's validity. Petitioners' action did not turn on abstract questions of law and could not constitutionally be decided in a vacuum.

Accordingly, the State Supreme Court's action would have violated the Due Process Clause even had simply state-created property rights been at issue. But the violation of the Due Process Clause was aggravated by the fact that the underlying rights sought to be vindicated by the Petitioners were federal constitutional rights. When a litigant asserts that changed circumstances since the passage of a statute have rendered its continued enforcement against him unconstitutional, the state courts are obliged to consider the evidence bearing on those circumstances. *Nashville, C. & St. L. Ry.* v. *Walters,* 294 U.S. 405 (1935). If due process was denied in *Walters* when evidence of changed circumstances was ignored, then surely due process has been denied to the Petitioners by the denial of the very trial at which they would adduce their evidence of changed circumstances.

It was essential to the presentation of Petitioners' suit to vindicate their federal constitutional rights that the full-

est possible evidentiary record be assembled, tested by cross-examination, and winnowed by findings at the trial in connection with the question of the issuance of a permanent injunction. Thus, the decisions of this Court teach that the development of an evidentiary record which reveals the details of the burden on interstate commerce is generally essential to an adjudication of the question whether an improper and unconstitutional burden exists. See, *e.g.*, *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945); *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520, 528 (1959). A similar full development of the factual record has been the order in cases of challenge to state statutes under the Fourteenth Amendment's Due Process and Equal Protection Clauses. See, *e.g.*, *Morey* v. *Doud*, 354 U.S. 457 (1957). In precluding a full development of the facts, the Indiana Supreme Court refused to furnish proper procedures for the due adjudication of federal rights while at the same time proceeding to render a judgment adverse to those rights. This it may not do. *Cf. Iowa-Des Moines Nat'l Bank* v. *Bennett*, 284 U.S. 239 (1931).

It may be questioned whether a state could constitutionally provide such a truncated procedure—without confrontation of witnesses or rights of cross-examination—for the determination of federal constitutional issues turning on factual development even if that procedure were prescribed in advance by statute or decisional law. See *The Ottawa*, 3 Wall. 268 (1866); *Du Beau* v. *Smither and Moyton, Inc.*, 203 F.2d 395 (D.C. Cir. 1953); *Pavaroff* v. *Pavaroff*, 130 P.2d 212 (Cal. App. 1942); *cf. Greene* v. *McElroy*, 360 U.S. 474, 497 (1959). But surely a state cannot advise the parties *after the fact* that this abbreviated hearing was all the trial they are to receive on issues requiring plenary development of the pertinent facts.

2. This case is certainly of a significance indicating the need for review on certiorari. A state appellate court action denying the parties a trial on the merits of their claim obviously presents a federal constitutional issue of substance. Where the underlying claim involves federal constitutional rights, the need for this Court's intervention as arbiter of the federal system becomes even more acute; and the significance of those federal claims here increases the seriousness of the matter. This Court recognized in *Brotherhood of Locomotive Engineers* v. *Chicago, R.I. & P.R. Co.*, 382 U.S. 423, 428 (1966), that the challenges to state full-crew laws based on the Commerce Clause and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment are not insubstantial. And the practical significance of these issues to the railroad industry is enormous. The annual cost of compliance with the Indiana statute alone has been estimated to be sixteen million dollars.[9] Several other states impose similar burdens on the industry. Thus the underlying merits of this lawsuit are undeniably of major import to the railroad industry, to the interstate transportation network it serves, and to the states still imposing full crew requirements. And, even if it were to be assumed that regardless of whether the petitioners make a compelling factual showing, the Indiana Supreme Court (despite its narrow majority) will not change its mind as to the constitutionality of the Full Crew Law, the fact remains that that court's action in precluding the development of a full record amounts to an unconstitutional clog on this Court's consideration, on review of the Indiana court's decision, of the underlying substantive questions.

---

[9] See R. 262, 274, 287, 297, 308, 319, 328, 336, 344, 354, 364, 374, 394, 409, 420. (References are to the Record before the Indiana Supreme Court.)

3. It has been suggested by Respondents that Petitioners requested a final judgment by the Supreme Court of Indiana and, accordingly, waived the issue presented by this Petition.[10] But Petitioners have made no such waiver. Respondents base their claim on the following passage from page 130 of Petitioners' brief in the Supreme Court of Indiana:

> "The issue in this case involves the constitutionality of the Indiana Excess Crew Law. It is a matter of public interest to the people of the State of Indiana as well as to all the railroads operating in Indiana. Because of the importance of the issues presented, this Court should determine the constitutionality of this law now as it has done in other cases involving the appeal of a temporary injunction. *Tinder* v. *Clarke Auto Co.*, 238 Ind. 302, 149 N.E.2d 808 (1958); *Department of Insurance* v. *Motors Insurance Corp.*, 236 Ind. 1, 138 N.E.2d 157 (1956)."

This request must be judged in the context of the federal constitutional issues which were then available to Petitioners in the state courts, and of the settled Indiana practice with respect to appeals from temporary injunctions. Petitioners based the request on two grounds. First, at the time this case was briefed and argued the decision of this Court in the Arkansas full crew case had not yet been rendered.[11] Accordingly, Petitioners believed that one of their four bases of unconstitutionality (preemption by reason of Public Law 88-108 and the Arbitration Award)

---

[10] This suggestion is contained in Respondents' Opposition to a Stay requested by Petitioners in this Court, pp. 8, *et seq.*

[11] The opinion in *Brotherhood of Locomotive Engineers* v. *Chicago, R.I. & P.R. Co.*, 382 U.S. 423, was rendered January 31, 1966. Petitioners' brief in the Supreme Court of Indiana was filed April 21, 1965, and argument was held on June 2, 1965.

which involved no development of evidence, if accepted, would be dispositive of the case even on interlocutory appeal.[12] *Cf. Board of Comm'rs* v. *Lucas,* 93 U.S. 108 (1876). It was to this point—the preemption point—that petitioners awarded preeminence in briefing and oral argument. Second, as the two Indiana cases cited in the quoted passage demonstrate, the Indiana Supreme Court has on occasion in other circumstances rendered an opinion as to the constitutionality of a statute even though the issue is presented on interlocutory appeal. But the opinion and decision so rendered have not been final; there is merely a decision on the abbreviated record then before the court, subject to further factual development at the subsequent trial on the merits. In *Weis* v. *Cox,* 205 Ind. 43, 185 N.E. 631, 632-33 (1933), the Indiana Supreme Court explained this practice as follows:

> "But since there seems to have been a full hearing [on the motion for temporary injunction], we will consider the questions presented upon their merits, having in mind, however, that upon a final hearing there may be other or different evidence which might influence the decision of the trial court . . . ."

Petitioners asked for a determination of the constitutional issues, but they never asked for or invited a final judgment on those constitutional issues turning on questions of fact. Petitioners requested either a holding on the issue of preemption, a proposition of law not requiring factual development, or a preliminary adjudication on the three remaining bases for injunctive relief, all involving questions of fact eventually requiring a full development at

---

[12] Indeed, in the Arkansas case, this Court (and the District Court whose order was being appealed from) both were able to make a final determination as to the preemption question on a summary judgment record. See 382 U.S., at 427-28.

trial. Either of those actions would have been standard in Indiana procedure and inoffensive to the requirements of procedural due process. But the action of the Supreme Court of Indiana in this case is unprecedented and has denied Petitioners their day in court in violation of the most elementary requirements of due process of law.

CONCLUSION

For the reasons stated, this Petition for a Writ of Certiorari to the Supreme Court of Indiana should be granted.

Respectfully submitted,

KARL J. STIPHER
DANIEL E. JOHNSON
810 Fletcher Trust Building
Indianapolis, Indiana 46204

PAUL A. PORTER
DENNIS G. LYONS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

Attorneys for Petitioners

July, 1966

Of Counsel:

BAKER & DANIELS
Indianapolis, Indiana

ARNOLD & PORTER
Washington, D. C.